IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3169 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

V B PATEL & CO

Versus

MOHMADSAFI YUSUFALLAH

Appearance:

MR THAKAR for M/S TRIVEDI & GUPTA for Petitioner

MR MC BAROT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/06/2001

ORAL JUDGEMENT

1. Heard the learned counsel Mr.Thakar for the

petitioner and Mr.Barot for the respondent No.1.

2. By way of this petition under Article 227 of the Constitution, the petitioner-employer has challenged the award and order of the Labour Court, Nadiad dated 27.1.1988 made in Reference (LCN) No.638/83 whereby the petitioner was ordered to reinstate the respondent with backwages and costs. It was vehemently argued on behalf of the petitioner that in the face of a written resignation admittedly signed by the respondent-workman, the Labour Court ought not to have believed the oral evidence of the respondent and awarded reinstatement with backwages. It appears from a plain reading of the impugned award that after appreciating the oral and documentary evidence including the alleged resignation of the respondent, the Labour Court has accepted and believed the say of the workman that a blank paper on which the signature of the workman was obtained was misused as a letter of resignation. It was an admitted position that there was no communication whatsoever that the letter of resignation had been accepted by the petitioner. The Court, therefore, in the facts and circumstances, refused to believe that a workman in permanent service for a long time would simply denounce his terminal benefits and straightaway leave the job by submitting a written resignation. In short, the Labour Court has arrived at a finding of fact after proper appreciation of evidence and no exception could be made to the conclusion which has been reached by the Labour Court. It would be hazardous for this Court to reappreciate the evidence and arrive at its own finding of fact in substitution of the finding arrived at by the Labour Court, particularly when perversity could not be attributed to the finding.

3. Secondly, it was argued on behalf of the petitioner that the respondent-workman had been paid his wages under the provisions of Section 17-B of the Industrial Disputes Act after initiation of these proceedings even as he was already employed by the State Road Transport Corporation since 22.4.1981 at a much higher rate of remuneration. An affidavit has been executed on behalf of the petitioner on 5.10.2000 stating the above facts along with a copy of the letter dated 21.3.2000 of the Divisional Controller, S.T. Nadiad under whom the respondent was employed. On this basis, it was submitted that the respondent-workman had wrongfully claimed backwages and obtained the benefits available under the provisions of Section 17-B of the Industrial Disputes Act. However, an affidavit of the respondent-workman for having been unemployed during the

pendency of these proceedings is not found on record and the petitioner has admittedly not taken care to controvert such affidavit, if it was filed, at the relevant time. However, the fact remains that the statement on oath made on behalf of the petitioner indicating alternative employment of the respondent is also not controverted and, therefore, it has to be accepted. In these facts and circumstances, even though the petitioner has not led any evidence before the Labour Court in respect of alternative employment of the respondent, it would appear that the award of backwages would not be justified and the impugned award is required to be modified to that extent.

4. Accordingly, in the peculiar facts and circumstances of the case, the petition is partly allowed and the impugned award and order is modified to the

extent that the respondent-workman shall not be entitled to any backwages. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-
12.6.2001 (D.H.Waghela, J.)
(KMG Thilake)